In The

Supreme Court of the United States

October Term, 1976

No. 76-931

ROBERT STOPS AND NORMA STOPS,

Petitioners,

vs.

LITTLE HORN STATE BANK,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CLARENCE T. BELUE

CLARENCE T. BELUE
Attorney at Law
201 West 4th Street
Hardin, Montana 59034

Counsel for Respondent

COCKLE PRINTING CO., 1822 ST. MARY'S AVE., OMAHA

INDEX

CITATIONS

CASES:

CITATIONS—Continued

CASES—Continued:

STATUTE:

REGULATIONS:

In The

Supreme Court of the United States

October Term, 1976

No. 76-931

ROBERT STOPS AND NORMA STOPS,
Petitioners,

vs.

LITTLE HORN STATE BANK,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Little Horn State Bank, respondent, opposes the petition for writ of Certiorari.

OPINIONS BELOW

The judgment of the Supreme Court of the State of Montana is reported as *Little Horn State Bank v. Robert Stops and Norma Stops,* 555 P. 2d 211 (Mont. 1976), and is reproduced as *Petitioners'* App. A. The Order and Memorandum of the District Court of the Thirteenth Judicial District of the State of Montana in and for the County of Big Horn is unreported and is reproduced as *Petitioners'* App. B.

———o———

JURISDICTION

The judgment of the Supreme Court of the State of Montana was entered on October 7, 1976. The jurisdiction of this court is invoked under 28 U. S. C. § 1257 (3).

———o———

QUESTION PRESENTED

Whether the Montana state courts and the sheriff of Big Horn County have jurisdiction to enforce an order of execution within the exterior boundaries of the Crow Indian Reservation on personal property owned and on wages earned by enrolled members of the Crow Tribe who earn their income and reside within the Reservation, when the judgment was rendered off the Reservation.

———o———

STATEMENT OF THE CASE

The facts of the case are stated fully in the decision of the Supreme Court of the State of Montana (*Petitioners'* App. A.)

———o———

ARGUMENT

I.

There is no conflict with the decisions of this Court.

Petitioners claim the decision below conflicts with *Williams, Kennerly, McClanahan* and *Fisher.*[1] But, none of these cases rule upon the question here presented—whether the state can enforce its judgment within the reservation. The decisions which do touch upon the question support the decision below.

Riggs v. Johnson, 6 Wall. 166 (1868), established the long standing doctrine of this court that any court having jurisdiction to render a judgment also has the power to enforce that judgment through any order or writ necessary to carry the judgment into effect.[2]

---

1 **Williams v. Lee,** 358 U. S. 217 (1959). **Kennerly v. District Court,** 400 U. S. 423 (1971). **McClanahan v. Arizona State Tax Comm'n,** 411 U. S. 164, 177, 178 (1973). **Fisher v. District Court,** 424 U. S. 382 (1976).

2 **U. S. ex rel. Riggs v. Johnson County,** 6 Wall. 166, 18 L. Ed. 768 (1868). **Pam-to-Pee v. United States,** 187 U. S. 371, 23 S. Ct. 142, 47 L. Ed. 221 (1902). **Hamilton v. Nakai,** 453 F. 2d 152, cert. den. 406 U. S. 945, 92 S. Ct. 2044, 32 L. Ed. 2d 332.

Utah & Northern R. v. Fisher, 116 U. S. 28 (1885) upholds the power of states to protect legitimate interests in the affairs of non-Indians within the reservation. This decision generally approved the doctrine that process of state courts may run into an Indian reservation where the subject matter or controversy is otherwise with their cognizance.[3] Petitioners concede subject matter jurisdiction and the validity of the state judgment. The state cannot enforce the judgment except by its own processes.[4] It is absurd to uphold the validity of the judgment, but to render it incapable of enforcement.[5]

II.

The decision below does not interfere with tribal self-government.

The concept of tribal self-government includes the corollary that off reservation activities are not a proper

---

3 **Utah & Northern R. v. Fisher,** 116 U. S. 28, 31 (1885).

4 The full faith and credit clause is not applicable to the tribe. Petitioners imply that the judgment may be enforced by the tribal court pursuant to 25 C. F. R. § 11.24C. This is not possible for two reasons, (1) the non-Indian has no access to the tribal court without the consent of the Indian litigant, (See 25 C. F. R. § 11.22C) and (2) § 11.24C applies to enforcement of tribal court judgments only. The C. F. R. provides no means of enforcing the state court judgment by tribal court.

5 See the decision below (Petitioners' App. A, p. 9a) quoting **Pam-to-Pee,** at p. 226 as follows:

> "The award of execution is a part, and an essential part, of every judgment passed by a court exercising judicial power. It is no judgment, in the legal sense of the term, without it. Without such an award the judgment would be inoperative and nugatory, leaving the aggrieved party without a remedy. It would be merely an opinion, which would remain a dead letter, and without any operation upon the rights of the parties * * *."

subject of that government.[6] The history of the concept as reviewed by this court in *McClanahan v. Arizona State Tax Comm'n,* 411 U. S. 164, 177-178 (1973), also acknowledges that the concept is limited to "when they preserved their tribal relations." *McClanahan v. Arizona State Tax Comm'n,* 411 U. S. 164, 93 S. Ct. 1257, 1263, 36 L. Ed. 2d 129 (1973). It follows that when an Indian leaves the reservation to enter commerce with the rest of the state, he also leaves this preserve for tribal ways and customs. Tribal self-government no longer applies, not because he has stepped outside the reservation so much as because he has freely chosen not to preserve his tribal ways and customs, and in their place has submitted himself to state laws. It follows, then, that his submission to state law, once done, is not retracted by merely stepping back into the reservation. The consequences of such a submission are not so easily shed. Thus, the decision below does not interfere with tribal self-government.[7]

---

6 **Mescalero Apache Tribe v. Jones,** 411 U. S. 145, 93 S. Ct. 1267, 1270, 36 L. Ed. 2d 114, 119, stating:

> "* * * Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the state."

7 Petitioners argue that tribal self-government is interfered with because, in their opinion, the respondent did not avail itself of available tribal or federal remedies. The court below correctly found that no such remedies exist. (See Petitioners' App. A, pp. 6a, 7a, 9a, 10a.) But more importantly, this argument of the petitioners does not address itself to the issue—does execution on reservation property to satisfy a valid state judgment interfere with tribal self-government. We argue that submission to state law by leaving the reservation subjects the Indian to state court remedies; therefore, issues of whether tribal remedies are available or not, are irrelevant.

III.

Inconsistency with other holdings does not necessitate granting the writ.

Respondent admits that the decisions cited on pages 14 and 15 of the petition are in conflict with the decision below. But these decisions, like the petitioners, argue that mesne processes of the state court require a second jurisdictional analysis under the *Williams* case, as if these processes constitute subject matter questions independent of the one considered at the outset of the suit. Their proposed second analysis is in error. To uphold it, is to in effect void the state judgment which the petitioners admit, and which this court acknowledges is valid.

CONCLUSION

For the reasons set forth above, the petition for certiorari should be denied.

Respectfully submitted,

CLARENCE T. BELUE

CLARENCE T. BELUE
Attorney at Law
201 West 4th Street
Hardin, Montana 59034

Counsel for Respondent

January 1977.